



September 3, 1999

Mr. Thomas F. Keever
Assistant District Attorney
Denton County District Attorney's Office
P.O. Box 2850
Denton, Texas 76201

OR99-2473

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 127041.

The Denton County District Attorney's Office (the "district attorney") received a request for statistical information regarding the number of arson cases forwarded to the district attorney's office for action during the past two years and all information concerning an arson case involving Jennifer Lynn Oliver. You have provided the requestor with the statistical information. You claim that the requested information relating to the arson case is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted documents.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The ten-day deadline is a statutorily imposed deadline. Gov't Code § 552.301. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The district attorney received the written request for information on May 20, 1999. The postmark shows that you mailed your request for a decision to this office on June 9, 1999, more than ten business days after receipt of the requestor's written request. Therefore, we conclude that the district attorney failed to meet the ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). Because section 552.108 is designed to protect a governmental body's interest, we conclude that the district attorney has waived the exception as to the submitted information as a result of its untimely submission of a request for an opinion from this office. *See generally* Open Records Decision No. 630 (1994) (demonstration of applicability of section 552.107(1) does not constitute compelling reason to overcome presumption of openness). Except for the information discussed below, you must release the submitted information to the requestor.

The submitted information contains information made confidential by law. First, you must withhold information under section 552.130 of the Government Code. Section 552.130 excepts information relating to a driver's license issued by an agency of this state. We have marked the driver's license numbers that you must withhold under section 552.130.

Second, the submitted information includes criminal history record information ("CHRI"). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the information excepted from required public disclosure by section 552.101 of the Government Code.

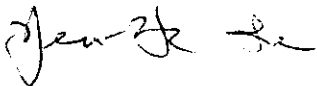
Third, you assert that Attachment E, which consists of records provided to the fire department by State Farm Insurance Company, is confidential under article 5.46 of the Insurance Code. Section 552.101 requires withholding information made confidential by statute. Article 5.46 of the Insurance Code provides for release of information by an insurance company investigating a fire loss to a local fire marshal on request. Subpart (D) of the article provides that those receiving such information "shall hold the information in confidence until such time as its release is required pursuant to a civil or criminal proceeding." Accordingly, under article 5.46, Attachment E must be withheld from the requestor.

Fourth, you contend that Attachment F is confidential under article 20.02 of the Code of Criminal Procedure. You explain that Attachment F is a letter that was sent to the foreman of the grand jury, read by the grand jury members, and given to the district attorney. Article 20.02(a) of the Code of Criminal Procedure states that "[t]he proceedings of the grand jury shall be secret." Thus, information that reveals the proceedings of the grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and excepted from disclosure under section 552.101 of the Government Code. Additionally, in Open Records Decision No. 513 (1988), this office concluded that grand juries are not subject to the Public Information Act, and that records within the constructive possession of grand juries are not public information subject to disclosure under the Public Information Act. *See* Gov't Code § 552.003. Based upon these considerations, we conclude that the district attorney must withhold Attachment F from disclosure if the district attorney is holding the letter on behalf of the grand jury.

Lastly, the submitted information includes a social security number that may be confidential. The social security number in the reports may be confidential if it was obtained or is maintained by the district attorney pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le", with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ch

Ref: ID# 127041

Encl. Marked documents

cc: Mr. Chris Coil
Reporter
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(w/o enclosures)